

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

ESTHER DÁVILA RIVERA; RAFAEL VÉLEZ RIVERA; AND THE CONJUGAL PARTNERSHIP FORMED BY ESTHER DÁVILA RIVERA AND RAFAEL VÉLEZ RIVERA

CIVIL NO. 02-2499 (DRD)

Plaintiffs,

vs.

CARIBBEAN REFRESCOS, INC.,
ABC INSURANCE COMPANY

Defendants.

REQUEST FOR LEAVE TO SUPPLEMENT MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE DANIEL R. DOMÍNGUEZ
UNITED STATES DISTRICT JUDGE:

COMES NOW, Defendant Caribbean Refrescos, Inc. ("CRI"), through its undersigned counsel, and respectfully alleges and prays as follows:

1. On June 9, 2003, Plaintiffs filed a motion for leave to file an amended complaint. (Docket No. 16) The purpose of such amendment was to include a cause of action under the Family Medical Leave Act. On June 20, 2003, CRI filed a motion in opposition to Plaintiffs' motion for leave to amend the complaint. (Docket No. 18) On July 3, 2003, the Honorable Court granted Plaintiffs' motion for leave to amend the complaint (Docket No. 20) and the amended complaint was deemed as filed on the same date (Docket No. 21).

2. On July 14, 2003, CRI filed a motion to dismiss Co-Plaintiff Esther Dávila Rivera's ("Ms. Dávila") cause of action

Civil No. 02-2499 (DRD)
Request for Leave to File
Supplementary Motion for Summary Judgment
Page 2

under FMLA. The Court denied CRI's motion to dismiss on February 10, 2004 (Docket No. 45). CRI filed an answer to the Amended Complaint on March 18, 2004.

3. Presently before the Court is CRI's Motion for Summary Judgment. (Docket No. 30) Said motion was filed prior to the Honorable Court's order denying CRI's Rule 12(b)(6) motion to dismiss Ms. Dávila's cause of action under the FMLA. Consequently, CRI did not request that summary judgment be entered with regards to Ms. Dávila's FMLA claim at the time it filed its summary judgment motion.

4. In view that the Court has denied the motion to dismiss and has not yet ruled on its summary judgment motion, CRI hereby requests that the Honorable Court allow it to supplement its motion for summary judgment and add a brief seven page discussion regarding the reasons why it should summarily dismiss the FMLA cause of action. A motion and supporting memorandum have been filed on this same date. Allowing such leave will not prejudice Plaintiffs in view that the Honorable Court has afforded them with additional time to file an opposition to the motion for summary judgment (Docket No. 52). Furthermore, by granting the instant motion, all of the pending causes of action would be addressed in the request for summary judgment.

Civil No. 02-2499 (DRD)
Request for Leave to File
Supplementary Motion for Summary Judgment
Page 3

WHEREFORE, CRI hereby requests that the Court allow it to supplement its Motion for Summary Judgment.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 23rd day of April, 2004.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on the aforementioned date the instant motion was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Juan M. Frontera Suau, at fronterasuau@hotmail.com and bufetecelinaromany@hotmail.com and to Dennis Simonpietri at arteres@coqui.net, dennis_simonpietri@hotmail.com.

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